IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18267 of 2021

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M/s Classic Marble and Granites a propreitorship firm having its place of business at Jaganpura, R K Nagar, Patna-800027 through its proprietor namely Hassan Raza male aged about 39 years son of M ohammad Hasan, Resident of Village-Chaknasir, P.O. Sukki, P.S. Patepur, District-Vaishali-843114.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna.
3. The Deputy Commissioner of State Taxes, Patna South Circle, Patna (2018-19).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, G.P.-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE A. M. BADAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-10-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

a) For issuance of a writ in the nature of certiorari for quashing of the part of the appellate order dated 28.03.2021 issued vide memo number 261 and also the summary of demand issued in form GST APL - 04 31.03.2021 by the respondent no. 2 whereby the appeal preferred by the petitioner has been disposed of with modification of the original liability;

b) For issuance of a writ in the nature of certiorari for quashing of the order dated 20.02.2019 passed by the respondent No. 3 under section 74 and 50 of the Bihar Goods And Service Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for short) on grounds of the same being perverse, based on incorrect interpretation of law and complete presumption;

c) For holding and a declaration that any inspection carried out of a business premises under section 67 of the Bihar act 2017 in absence of the valid authorization by the prescribed authority in law is invalid and has no sanctity in the eye of law and therefore the consequential proceeding initiated on the basis of such inspection report is also invalid and unsustainable in the eye of law;

d) For further holding and a declaration that the respondent number 2 having accepted the petitioner's contention of valid transactions carried out for the period in question could not have adopted a dichotomous approach by denying genuineness of a part/portion of such transaction which had absolutely no difference to the one accepted;

e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.

Having heard learned counsel for the parties, as also perused the record, we are of the considered view that the prayer made by the petitioner, with regard to applicability of the provisions of Section 50/74 of the Bihar Goods and Service Tax Act, 2017 (hereinafter referred to as "the Act") was never considered by the Appellate Authority, despite the issue having been raised by the petitioner. Also, the order passed by the Appellate Authority is cryptic and unreasonable. None of the issues raised by the petitioner in the appeal were considered or dealt with.

Shri Vivek Prasad, learned Government Pleader No. 7 does not dispute such position. However, he seeks time to file a counter affidavit in the matter.

We see no reason as to why time, as prayed for, is granted, when *ex facie* we are of the considered view that the Appellate Authority has failed to exercise the jurisdiction vested, to take a decision in accordance with law. The order is totally unsustainable in view of the law, more so in view of the provisions of sub-section (12) of Section 107 of the Act. Further, the order does not assign any reason for arriving at the conclusion for modifying the order passed by the Assessing Authority. It is a settled principle of law that the impugned order entails civil consequences, inasmuch as, the petitioner is required to not only pay the amount but also suffer penal consequences.

As such, leaving all questions of fact and law open, to be adjudicated by the Appellate Authority, we disposed of the present petition in the following terms:-

(a) We quash and set aside the impugned order dated 28.03.2021 passed by respondent no.2, namely the Additional Commissioner of State Taxes, (Appeal), Patna West Division, Patna in Appeal Case No. GST/PS-02/19-20 (Annexure-5), as also the summary of the demand in Form GST APL-04 dated 31.03.2021, passed by respondent no.2, namely the Additional

Commissioner of State Taxes, (Appeal), Patna West Division, Patna (Annexure-5/A);

(b) The appeal is restored to its original file and number position and status;

(c) Petitioner undertakes to appear before the Appellate Authority i.e. respondent no.2, namely the Additional Commissioner of State Taxes, (Appeal), Patna West Division, Patna on 22nd of November, 2021, if possible through digital mode;

(d) The Appellate Authority shall decide the appeal on merits after complying with the principles of natural justice;

(e) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(f) During pendency of the appeal, no coercive steps shall be taken against the petitioner.

(g) The Appellate Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(h) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(i) The Appellate Authority shall positively decide the appeal afresh on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(j) The Appellate Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(k) Liberty reserved to the petitioner to challenge the order, if required and desired;

(l) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(m) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;

(n) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

(o) We have not expressed any opinion on merits and all issues are left open;

The instant petition sands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.

(Sanjay Karol, CJ)

(A. M. Badar, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	03.11.2021
Transmission Date	